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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALBERT ANDREW MURRER III

Appeal 2008-1407¹
Application 10/629,322
Technology Center 3700

Decided: September 30, 2008

Before TONI R. SCHEINER, DONALD E. ADAMS, and ERIC GRIMES,
Administrative Patent Judges.

ADAMS, *Administrative Patent Judge.*

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 6-10, 12-19, and 25. Pending claims 1-5 and 20-24 have been withdrawn in response to a Restriction Requirement (App. Br. 4). We have jurisdiction under 35 U.S.C. § 6(b).

¹ Oral Hearing held September 16, 2008.

INTRODUCTION

The claims are directed to a container system. Claims 6, 7, 9, 10, 16, 17, and 25 are illustrative:

6. A container system, comprising:

a soft-sided outer shell, said outer shell comprising a plurality of vertical walls and bottom integrally formed and having an inner layer formed of watertight material, said vertical walls and bottom forming an open top which is covered by a lid adapted to be selectively secured to said vertical walls,

wherein said outer shell is at least partially collapsible when unsupported; and

an inner frame having rigid walls;

wherein said inner frame is adapted to support said outer shell when said inner frame is inserted inside said outer shell;

wherein said inner frame is at least partially collapsible.

7. The container system according to claim 6, further comprising hazardous material positioned within said outer shell.

9. The container system according to claim 6, wherein said outer shell satisfies IATA 602 requirements for an outer packaging when supported from within by said inner frame.

10. The container system according to claim 6, wherein said soft-sided outer shell includes vent holes.

16. The container system according to claim [6, wherein said outer shell includes an outer fabric layer and foam insulation for thermally insulating an interior of said shell from an external environment], wherein said outer fabric includes polyester.

17. The container system according to claim 6, wherein said inner frame comprises:

a pair of opposing, rigid longitudinal walls; and

a pair of opposing, collapsible side walls, each of said side walls linking an end of one of said longitudinal walls to an end of the other of said

longitudinal walls, said side walls adapted to collapse to allow a reduction in a distance between said longitudinal walls.

25. The container system of claim 6, wherein said outer shell is capable of withstanding an internal pressure which produces a pressure differential of not less than 95kPa (0.95 bar, 13.8lb/in²) in the range o[f] - 40°C to +55°C (-40°F to 130°F).

The Examiner relies on the following prior art references to show unpatentability:

| | | |
|------------------|--------------------|---------------|
| Travis | US 4,585,159 | Apr. 29, 1986 |
| Reichert | US 4,865,899 | Sep. 12, 1989 |
| Zeddies | US 6,336,342 B1 | Jan. 8, 2002 |
| Kalal | US 2003/0106895 A1 | Jun. 12, 2003 |
| Redzisz et al. | US 2003/0136702 A1 | Jul. 24, 2003 |
| Tattam | US 6,609,628 B2 | Aug. 26, 2003 |
| Boyd-Moss et al. | US 6,631,801 B2 | Oct. 14, 2003 |
| McHutchison | WO 02/18210 A1 | Mar. 7, 2002 |

Weisstein, Eric W. "Cuboid." From *MathWorld--A Wolfram Web Resource*. <http://mathworld.wolfram.com/Cuboid.html>.

The rejections as presented by the Examiner are as follows:

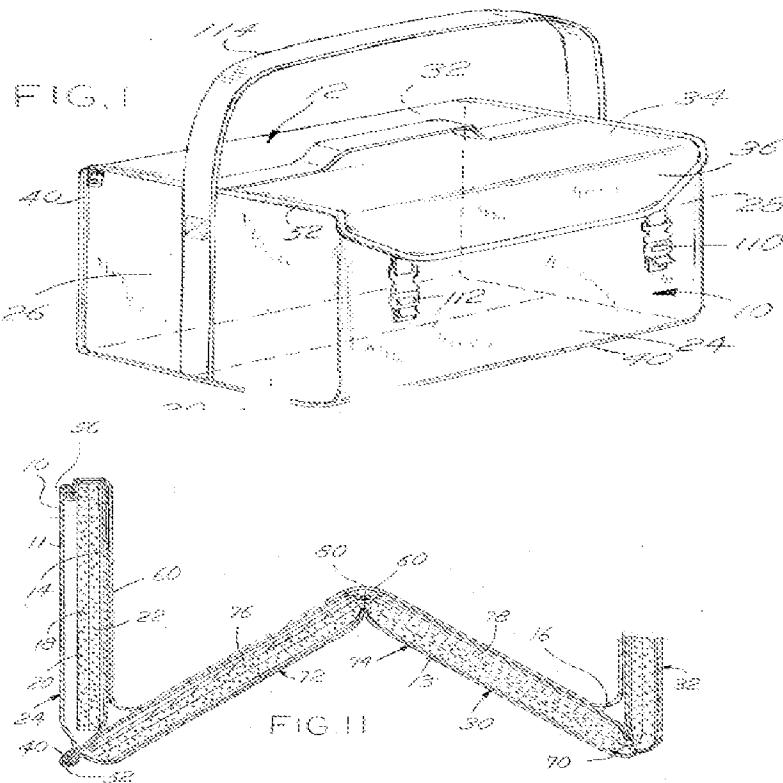
1. Claims 6 and 12-15 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz and Zeddies.
2. Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Tattam.
3. Claim 9 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Boyd-Moss.
4. Claim 10 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Kalal.

5. Claim 16 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Reichert.
6. Claims 17-19 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Travis.
7. Claim 25 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and McHutchison.

We affirm.

FINDINGS OF FACT (FF)

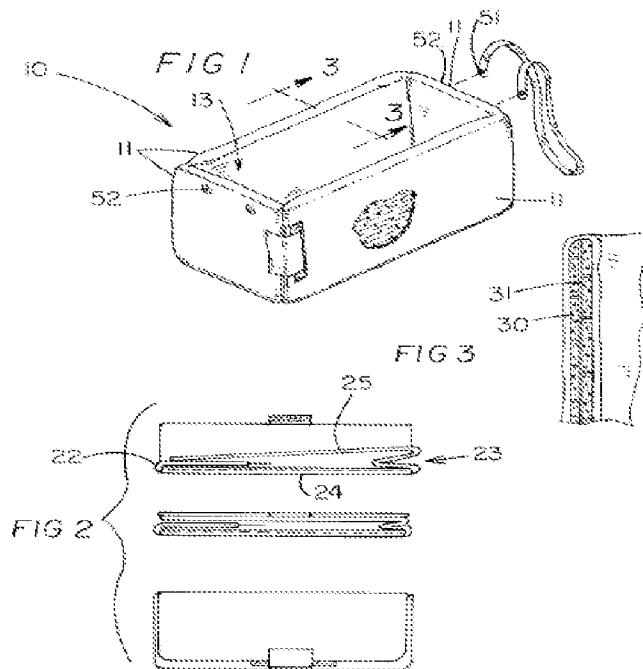
1. Redzisz teaches “[a] collapsible insulated cooler case [which] includes a sandwich construction of fabric and cell foam material forming the panel walls of the container” (Redzisz, Abstract). For clarity, we reproduce Redzisz’s figures 1 and 11 below:



“**FIG. 1** is an isometric view of the case in the closed, yet fully assembled, condition or mode” (Redzisz 2: ¶ 0014). “**FIG. 11** is a cross sectional enlarged view of the bottom side and front and back side construction of the case” in a partially collapsed condition (Redzisz 1: ¶ 0024).

2. Redzisz teaches that “[t]he flexible fabric sections, or subsections, **10** and **12** may be fabricated from plastic materials, fabric materials, or any similar flexible sheet material” (Redzisz 2: ¶ 0030).
3. Redzisz’s container includes a plurality of vertical walls (24, 26, 28, 32), a bottom (30), and a top or lid (34 and 36) that is adapted to be secured (110 and 112) to vertical wall (10) (Redzisz FIG. 1; 2: ¶¶ 0030, 0031, and 0035).
4. Redzisz teaches that the container “is easily collapsed and physically maintained in fully collapsed condition” (Redzisz 2: ¶ 0037).
5. Zeddies teaches a collapsible cooling pack that “includes a plurality of walls defining an interior” which can be collapsed or deployed for receiving items, a top, and a bottom (Zeddies, Abstract; col. 1, l. 43 - col. 2, l. 2; col. 3, ll. 1-14, and col. 4, ll. 43-51).

For clarity, we reproduce Zeddies' figures 1-3 below:

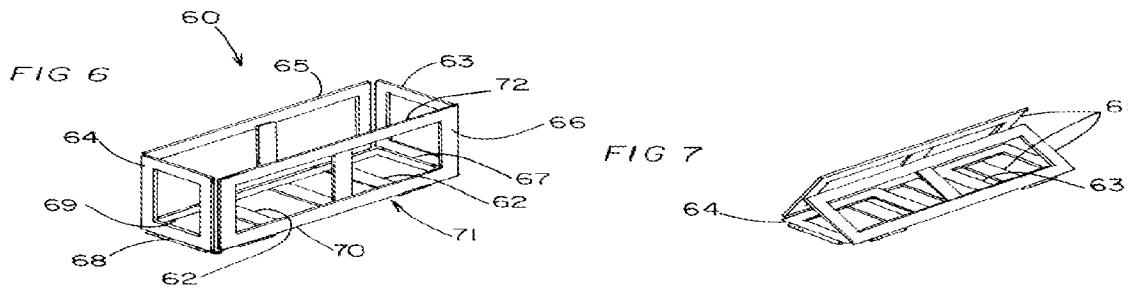


“FIG. 1 is a schematic perspective view of a portion of the new collapsible cooling pack according to . . . [Zeddies’] invention. FIG. 2 is a schematic perspective view of the present invention shown in its stored configuration and in two stages of expansion. FIG. 3 is a schematic sectional view taken along line 3-3 of [Zeddies’] invention showing an optional wall structure.”

(Zeddies, col. 3, ll. 40-48.)

6. Zeddies teaches that “[e]ach of the walls 11 may comprise a layer of a thermal-retentive material 30. The thermal-retentive material 30 may comprise a flowable gel material. Each of the walls 11 may comprise a substantially rigid panel 31 positioned adjacent to the thermal-retentive material 30” (Zeddies, col. 4, ll. 24-28).

7. Zeddies teaches that a bend line “is formed between the end regions of the walls mounted together . . . to allow bending . . . for permitting adjacent walls **22, 23, 24, 25** on opposite sides of the bend line . . . to be folded into an adjacent condition” (Zeddies, col. 4, ll. 16-20).
8. Zeddies teaches a frame adapted to fit in the interior of the walls when they are oriented perpendicular to the bottom wall (Zeddies, FIG. 6 and col. 5, ll. 13-24). Zeddies teaches that the frame panels **63-66** are pivotally mounted on the bottom frame panel to allow the frame panels to fold (Zeddies, FIGs. 6-7 and col. 5, ll. 20-24). For clarity, we reproduce Zeddies’ FIGs 6 and 7 below:



- “FIG. 6 is a schematic perspective view of the plurality of frames of . . . [Zeddies’] invention shown in condition for use. FIG. 7 is a schematic perspective view of the plurality of frames shown in a stored configuration” (Zeddies, col 3, ll. 54-57).
9. Tattam teaches a collapsible transport container (Tattam, Abstract).
 10. Tattam teaches that the container can be used for the transport of “pharmaceutical and biochemical products (including diagnostic agents), and organs for transplantation” (Tattam, col. 1, ll. 30-31).
 11. Boyd-Moss teaches that the

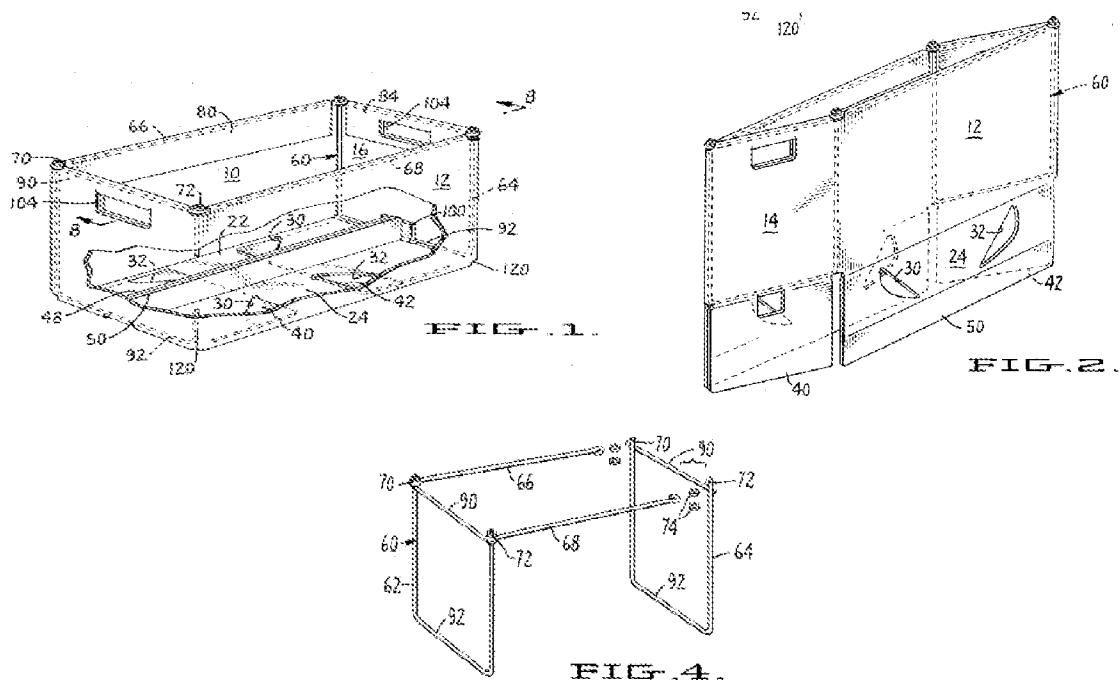
[t]ransport of hazardous goods, in particular medical samples, is subject to regulation. Security against leakage, in general, and in particular against crush induced leakage is called for. There

are different levels of regulation for different samples. The more hazardous is the sample, the more severe is the regulation, for example IATA Transport of Dangerous Goods Regulations 602 and 650.

(Boyd-Moss, col. 1, ll. 11-15.)

12. Boyd-Moss teaches a medical sample transport package that meets the regulations for the transport of hazardous samples is known in the art (Boyd-Moss, col. 1, ll. 16-29). In addition, Boyd-Moss teaches a transport package that meets the requirements of IATA 602 (Boyd-Moss, col. 8, ll. 1-3).
13. Kalal teaches a collapsible insulative container (Kalal, Abstract).
14. Kalal teaches that the shell and/or liner of the container “are preferably provided with air vents, such as holes . . . preferably fixed with grommets . . . that allow air to escape upon the collapse of [the] container . . . from the operative position to the collapsed position” (Kalal, 3: ¶ 0022).
15. Reichert teaches a laminated containment structure “configured as a sealable container suited for storage and handling of harardous [sic] materials” (Reichert, Abstract).
16. Reichert teaches that the laminated containment structure is “formed from laminations of a highly impervious [polyester] elastomer and associated geotextile fabric layers” which have “extremely high resistance to puncture and leakage” (Reichert, Abstract and col. 1, ll. 7-11).

17. Travis teaches a collapsible container, “preferably formed from relatively stiff fiberboard” (Travis, col. 2, ll. 21-22). For clarity, we reproduce Travis’ figures 1, 2, and 4 below:



“FIG. 1 is a perspective view of a preferred form of container constructed in accordance with the teachings of . . . [Travis’] invention, and shown fully set-up and with selective portions broken away; FIG. 2 is a perspective view of the container of FIG. 1 in a knocked-down condition; . . . FIG. 4 is a partially exploded, perspective view of a frame member used in the construction of the container of FIG. 1” (Travis, col. 1, ll. 49-59).

18. McHutchison teaches a medical transport container for transporting donor organs wherein air can be extracted from the storage volume so that a sub-atmospheric pressure can be maintained therein (McHutchison, Abstract).

DISCUSSION

1. Claims 6 and 12-15 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz and Zeddies. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 6.

Claim 6 is drawn to a container system. The claimed container system comprises:

1. a soft-sided outer shell that is at least partially collapsible when unsupported, and comprises:

- (a) a plurality of vertical walls,
- (b) an integrally formed bottom, and
- (c) an inner layer formed of watertight material,

wherein the vertical walls and bottom form an open top which is covered by a lid adapted to be selectively secured to the vertical walls; and

2. an inner frame having rigid walls that is:

- (a) at least partially collapsible and
- (b) adapted to support the outer shell when the inner frame is inserted inside the outer shell.

The Examiner finds that Redzisz teaches “a container . . . with a collapsible soft sided outer shell, a plurality of vertical walls and a bottom integrally formed, an inner layer of watertight material . . . [and] a lid secured to the sidewalls” (Ans. 4; *see also* FF 1-4). The Examiner finds, however, that “Redzisz does not teach the use of a rigid inner frame” (Ans. 4). The Examiner relies on Zeddies to make up for this deficiency in Redzisz.

In this regard, the Examiner finds that Zeddies teaches “a collapsible rigid inner frame used with a collapsible outer shell to provide support to the outer shell” of the container (*id.*, *see also* FF 5-8).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a collapsible rigid inner frame as disclosed by Zeddies in the container disclosed by Redzisz to provide support for the soft sided collapsible outer shell.

(Ans. 4.)

In response, Appellant does not dispute, and therefore concedes², that Redzisz teaches a container that comprises a plurality of vertical walls, an integrally formed bottom and an inner layer formed of watertight material, wherein the vertical walls and bottom form an open top which is covered by a lid adapted to be selectively secured to the vertical walls (FF 1, 3, and 4). Appellant also does not dispute that Zeddies teaches a frame for a collapsible cooling pack (FF 5 and 6).

Instead, Appellant asserts that “Redzisz not only does not refer to any ‘soft-sided’ outer shell but rather describes something entirely different -- a cooler with a built in rigid frame” (App. Br. 11; *see also* Reply Br. 7 (Redzisz’s “container is constructed to have certain properties which maintain its shape in the open position”)). We disagree.

According to Appellant’s Specification “[a]s used herein, ‘soft-sided’ refers to a non-rigid characteristic. ‘Soft-sided’ may include a surface that

² Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (“Any arguments or authorities not included in the brief or a reply brief ... will be refused consideration by the Board, unless good cause is shown.”).

can be, for example, bent or folded, either easily or with relatively little force” (Spec. ¶ 0009). Redzisz teaches “[a] collapsible insulated cooler case [which] includes a sandwich construction of fabric and cell foam material forming the panel walls of the container” (FF 1). There is no evidence on this record to suggest that the fabric and cell foam construction of Redzisz’ container does not result in a soft sided outer shell as defined by Appellant. It is well settled that argument by counsel cannot take the place of evidence. *In re Cole*, 326 F.2d 769, 773 (CCPA 1964); *In re Geisler*, 116 F.3d 1465, 1471 (Fed. Cir. 1997). Accordingly, we are not persuaded by Appellant’s unsupported assertion.

As to the inner frame, Appellant directs attention to Redzisz’s preferred embodiment asserting that “[t]he nature of the Redzisz cooler that allows for folding is shown in Fig. 11, which depicts the foldable bottom side as being divided into equally sized panels 72 and 74, which ‘have a shape and configuration defined by semi-rigid or rigid plate members 76 and 78’” (App. Br. 10; Redzisz 2:¶ 34). From this Appellant asserts that “[i]t is thus clear from a proper reading of Redzisz that the cooler is designed with sufficient inner structural rigidity resulting at least in part from an inner frame . . . so that the cooler maintains its shape . . . when fully opened” (App. Br. 11; *see also* Reply Br. 7). Therefore, Appellant concludes that “[o]ne of ordinary skill would not be motivated to add a second (duplicative) rigid inner frame to a cooler that already has sufficient inner support to maintain its rectangular cooler shape when fully opened” (*id.*). We disagree.

Both Redzisz and Zeddies teach a collapsible container that can retain some shape when in the open configuration (*see, e.g.*, FF 1 and 5). Such a configuration is not excluded from Appellant’s definition of a non-rigid,

soft-sided container which “may include a surface that can be, for example, bent or folded, either easily or with relatively little force” (Spec. ¶ 0009).

Zeddies teaches that the walls of the container *may* comprise a “substantially rigid panel” (FF 6), which according to Appellant’s assertions would further maintain the container’s shape in the open position. Nevertheless, Zeddies teaches the use of a frame that fits in the interior of the walls when they are oriented perpendicular to the bottom wall (FF 8). Stated differently, even if one of ordinary skill in this art would make use of Zeddies’ substantially rigid panel for use in the construction of the container’s walls, Zeddies teaches the use of an inner frame to support the container.

There is, however, no requirement in Zeddies that a relatively rigid material be used for the walls. There is also no evidence on this record that Redzisz’s container does not result in a soft sided outer shell as defined by Appellant. Therefore, as a whole, we find Appellant’s arguments unpersuasive.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”

KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739 (2007). For the foregoing reasons, we find no error in the Examiner’s *prima facie* case of obviousness. Accordingly, we affirm the rejection of claim 6 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz and Zeddies. Claims 12-15 fall together with claim 6.

2. Claims 7 and 8 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Tattam. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 7.

Claim 7 is drawn to the container system according to claim 6 that further comprises hazardous material positioned within the outer shell. According to Appellant's Specification the term

“[h]azardous material” refers to products or materials which may pose a safety or health hazard. For example, hazardous material may include medical-related material such as biohazards. Hazardous material may include organs or other body parts or radioactive material.

(Spec. 3: ¶ 0008.)

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant's claimed invention “except for the use of the container to transport hazardous materials such as human organs” (Ans. 5). The Examiner relies on Tattam to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that “Tattam discloses a collapsible insulated container that may be used for transportation of organs” (*id.*; *see also* FF 9-10).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the container of Redzisz and Zeddies for the transport [of] hazardous materials such as human organs since human organs require transportation in a temperature controlled container and

it is known to use collapsible insulated containers for such a purpose.

(Ans. 5.)

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 12). Specifically, Appellant asserts that this rejection “fails because it lacks a motivation to combine the teachings of Redzisz with that of Zeddies” (*id.*).

We are not persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies. Accordingly, we affirm the rejection of claim 7 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Tattam. Claim 8 falls together with claim 7.

3. Claim 9 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Boyd-Moss.

Claim 9 is drawn to the container system according to claim 6, wherein said outer shell satisfies IATA 602 requirements for an outer packaging when supported from within by the inner frame.

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant’s claimed invention but for the requirement “that the outer shell satisfies IATA 602 requirements” (Ans. 5). The Examiner relies on Boyd-Moss to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that “Boyd-Moss et al discloses [sic] that it is known to construct a transport package that meets IATA 602 requirements to allow the package to be used for transport of hazardous goods” (*id.*; *see also* FF 11-12).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use [of] materials and construction to meet IATA 602 as disclosed by Boyd-Moss et al. in the container . . . [taught by the combination of Redzisz and Zeddies] to allow the container to be used for transport of hazardous materials.

(Ans. 5-6.)

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 12). Specifically, Appellant asserts that this rejection “fails because it lacks a motivation to combine the teachings of Redzisz with that of Zeddies (*id.*).

We are not persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies. Accordingly, we affirm the rejection of claim 9 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Boyd-Moss.

4. Claim 10 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Kalal.

Claim 10 is drawn to the container system according to claim 6, wherein the soft-sided outer shell includes vent holes.

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant’s claimed invention “except for the vent holes” (Ans. 6). The Examiner relies on Kalal to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that “Kalal discloses a collapsible soft sided container with a liner having vent

holes in the outer shell to allow venting of air when the container is collapsed” (*id.*; *see also* FF 13-14).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of vent holes in the outer shell as disclosed by Kalal in the container . . . [taught by the combination of Redzisz and Zeddies] to allow venting of air when the container is collapsed.

(Ans. 6.)

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 13). Specifically, Appellant asserts that this rejection “fails because it lacks a motivation to combine the teachings of Redzisz with that of Zeddies (*id.*).

We are not persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies. Accordingly, we affirm the rejection of claim 10 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Kalal.

5. Claim 16 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Reichert.

Claim 16 is drawn to the container system according to claim 6, wherein the outer shell includes an outer fabric layer, including polyester, and foam insulation for thermally insulating an interior of the shell from an external environment.

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant’s claimed invention with the exception that “the

outer fabric includes polyester” (Ans. 6). The Examiner relies on Reichert to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that “Reichert discloses a container for the transport of hazardous materials constructed from fabric comprising polyester that is selected for a high degree of imperviousness to hazardous materials” (*id.*; *see also* FF 15-16).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of polyester in the fabric of the container as disclosed by Reichert in the container . . . [taught by the combination of Redzisz and Zeddies] to provide a high degree of imperviousness to hazardous materials.

(Ans. 6.)

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 13). Specifically, Appellant asserts that this rejection “fails because it lacks a motivation to combine the teachings of Redzisz with that of Zeddies (*id.*). We are not persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies.

Appellant also asserts that the rejection attempts “to combine non-analogous art, *i.e.*, the teachings for an underground and above ground bulk storage tank with that of a transport container for biohazardous material” (App. Br. 14; *see also* Reply Br. 9). In this regard, Appellant asserts that Reichert

discloses the use of polyester in the “underground and above ground bulk storage tanks’ [sic] and for the storage of “diesel

fuel, gasoline, chemical solvents, and other volatile and/or corrosive materials.” . . .

By contrast, the present invention is a container for small scale transportation and storage of biohazard materials, *e.g.* “medical-related material,” “organs or other body parts,” or “radioactive material” . . . Quite clearly, the Reichert container and the container of claim 16 differ in the scale of capacity, bulk storage tank *vs.* portable container.

(*Id.*; *see also* Reply Br. 8.) We are not persuaded.

As Appellant recognizes, the claimed invention is drawn to a container which may be used in the transport and storage of hazardous materials.

“A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” *In re Clay*, 966 F.2d 656, 659 (Fed.Cir.1992). In other words, “familiar items may have obvious uses beyond their primary purposes.” *KSR Int’l Co. v. Teleflex, Inc.*, --- U.S. ----, 127 S.Ct. 1727, 1742, 167 L.Ed.2d 705 (2007).

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379-1380 (Fed. Cir. 2007).

On this record, the combination of Redzisz and Zeddies teaches a container for the transport and storage of materials. Reichert speaks of the transport and storage of hazardous materials (FF 15-16). In our opinion, Reichert would have logically commended itself to one seeking to transport and/or store hazardous materials. As such, Reichert teaches a structure comprising a highly impervious polyester elastomer and associated geotextile fabric layer which has extremely high resistance to puncture and leakage (FF 16). Taken together the combination of Redzisz, Zeddies, and

Reichert would have suggested a container for the transport and storage of hazardous material that comprises a polyester elastomer and associated geotextile fabric layer which has extremely high resistant to puncture and leakage. Accordingly, we are not persuaded by Appellant's argument to the contrary.

We are also not persuaded by Appellant's assertion that the claimed invention differs in size with respect to the container taught by the combined teachings of Redzisz, Zeddies, and Reichert. *See In re Rose*, 220 F.2d 459, 463 (CCPA 1955) ("the size of the article under consideration . . . is not ordinarily a matter of invention"); *In re Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 1345-46 (Fed. Cir. 1984) ("structural differences over the prior art do not necessarily result in differences in performance over the prior art.").

For the foregoing reasons, we affirm the rejection of claim 16 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Reichert.

6. Claims 17-19 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Travis. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 17.

Claim 17 is drawn to the container system according to claim 6, wherein said inner frame comprises:

a pair of opposing, rigid longitudinal walls; and

a pair of opposing, collapsible side walls, adapted to collapse to allow a reduction in a distance between longitudinal walls, where each side wall links an end of one of the longitudinal walls to an end of the other longitudinal walls.

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant's claimed invention with the exception "that the side walls link the ends of the longitudinal walls and allow a reduction in a distance between the longitudinal walls when collapsed" (Ans. 7). The Examiner relies on Travis to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that "Travis discloses a frame structure capable of being used as the inner frame of the invention made of rigid material . . . with the sidewalls linking the ends of the longitudinal walls and the walls being collapsible allowing a reduction in a distance between the longitudinal walls" (*id.*; *see also* FF 17).

Based on this evidence the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the frame structure as disclosed by Travis in the container . . . [taught by the combination of Redzisz and Zeddies] to provide an inner frame that would be less bulky and fold flat with a thinner profile for handling and storage.

(Ans. 7.)

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 15). Specifically, Appellant asserts that this rejection "fails because it lacks a motivation to combine the teachings of Redzisz with that of Zeddies" (*id.*). We are not

persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies.

Appellant also asserts that the design of Travis' removable inner rigid frame is entirely different than that required by the claimed invention (*id.*). In this regard, Appellant asserts that "Travis provides one type of foldable container; and Redzisz another. An artisan would naturally use either the Travis container or the Redzisz container depending upon the particular application" (Reply Br. 9). We are not persuaded by Appellant's argument which fails to address the teachings of Zeddies.

As discussed above, the combination of Redzisz and Zeddies teaches a container with an internal frame. Travis teaches an internal frame having side walls that are linked to the ends of longitudinal walls (Ans. 7; FF 17). The walls of Zeddies' frame are pivotally mounted on the bottom frame panel. Both the Zeddies and the Travis frames allow the frame to collapse into a conformation that reduces the distance between longitudinal walls (FF 8 and 17). There is no evidence on this record to suggest that the pivotable mounts of Zeddies' frame could not be replaced with the wall linkages taught by Travis to accomplish the same purpose of allowing the frame to collapse in a manner that reduces the distance between the frame's longitudinal walls.

"Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious." *In re Fout*, 675 F.2d 297, 301 (CCPA 1982); *see also In re Mayne*, 104 F.3d 1339, 1340 (Fed. Cir. 1997) ("Because the applicants merely substituted one element known in the art for a known equivalent, this court affirms [the rejection for obviousness]."). *Accord KSR*, 127 S.Ct. at 1740 ("when a patent claims a

structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result”). Accordingly, we are not persuaded by Appellant’s assertion that “there is no motivation from the art to use the collapsible feature of the container design of Travis as a removable collapsible inner rigid frame design other than in hindsight based on Appellant’s invention” (App. Br. 16).

For the foregoing reasons, we are not persuaded by Appellant’s assertion that “[o]ther than his own personal opinion and hindsight reconstruction using Appellants’ [sic] disclosure . . . the Examiner has demonstrated no reason or motivation to make the alleged combination of Travis and Redzisz” (Reply Br. 9).

Accordingly, we affirm the rejection of claim 17 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and Travis. Claims 18 and 19 fall together with claim 17.

7. Claim 25 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and McHutchison.

Claim 25 is drawn to the container system of claim 6, wherein the outer shell is capable of withstanding an internal pressure which produces a pressure differential of not less than 95kPa (0.95 bar, 13.8lb/in²) in the range of -40°C to +55°C (-40°F to 130°F).

The Examiner relies on the combination of Redzisz and Zeddies as discussed above. The Examiner finds that the combination of Redzisz and Zeddies teaches Appellant’s claimed invention “except for the outer shell [being] capable of withstanding an internal pressure, which produces a

pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees” (Ans. 8). The Examiner relies on McHutchison to make up for the deficiency in the combination of Redzisz and Zeddies. In this regard, the Examiner finds that “McHutchison discloses an insulated container that . . . is able to transport human organs at pressures other than atmospheric pressure because this allows organs to be conserved for a longer period of time” (Ans. 8; *see also* FF 18).

Based on this evidence the Examiner concludes that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the ability to transport human organs at pressures other than atmospheric pressure in the container . . . [taught by the combination of Redzisz and Zeddies]” (Ans. 8). In addition, the Examiner concludes that

[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the capability of withstanding an internal pressure which produces a pressure differential of not less than 95 kPa in the range of -40 degrees C to +55 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

(*Id.*) We find no error in the Examiner’s *prima facie* conclusion of obviousness. The “discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art.” *In re Boesch*, 617 F.2d 272, 276 (CCPA 1980) (citations omitted).

In response, Appellant relies on the arguments made with regard to the combination of Redzisz and Zeddies above (App. Br. 16). Specifically, Appellant asserts that this rejection “fails because it lacks a motivation to

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combine the teachings of Redzisz with that of Zeddies (*id.*). We are not persuaded for the reasons set forth above regarding the combination of Redzisz and Zeddies.

Accordingly, we affirm the rejection of claim 25 under 35 U.S.C. § 103 as unpatentable over the combination of Redzisz, Zeddies, and McHutchison.

CONCLUSION

In summary, we affirm the rejections of record.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Ssc:

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